

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:17-CV-00456-GCM**

ENDO PHARMACEUTICALS, INC,)	
<i>as fiduciary of the Endo Pharmaceutical</i>)	
<i>Flexible Benefits Plan,</i>)	
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
TATYANA YEVSIN,)	
)	
)	
Defendant.)	
)	

THIS MATTER is before the Court on Plaintiff's Motion for Default Judgment (Doc. No. 8). For the following reasons, a hearing is set for resolution of this Motion on January 10, 2018.

The Fourth Circuit has a "strong preference" that default judgments be avoided and cases be decided on the merits. *Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 616 F.3d 413, 417 (4th Cir. 2010). However, a default judgment "may be appropriate when the adversary process has been halted because of an essentially unresponsive party." *SEC v. Lawbaugh*, 359 F. Supp. 2d 418, 421 (D. Md. 2005).

Rule 55 of the Federal Rules of Civil Procedure governs the procedure for entering a default judgment. On September 18, 2017, Plaintiff moved for an entry of default pursuant to Rule 55(a), which the clerk entered on September 19. Subsequently, on October 31, 2017, Plaintiff moved for a default judgment by the Court, as required by Rule 55(b)(2).

When a defendant is in default, the well-pleaded factual allegations of the complaint are deemed to be admitted by the defendant, but conclusions of law and the amount of damages are

not. *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir. 2001). A court must thus “determine whether the well-pleaded allegations in [the] complaint support the relief sought.” *Id.* The plaintiff bears the burden of proving that judgment should be granted by way of a motion for default judgment. *Silvers. V. Iredell Cty. Dept. of Soc. Servs.*, No. 5:15-cv-00083, 2016 WL 427953, at *6 (W.D.N.C. Feb. 3, 2016). And before entering a default judgment, a court may “conduct hearings or make referrals” in order to “(A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter.” Fed. R. Civ. P. 55(b)(2).

Accordingly, the Court orders a hearing for Plaintiff to present evidence proving the truth of its allegations against Defendant. The hearing will be held on **January 10, 2018**, in **Courtroom 2-2**.

SO ORDERED.

Signed: December 13, 2017



Graham C. Mullen
United States District Judge

